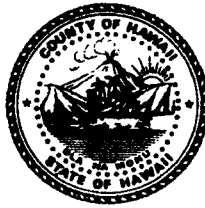


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i

PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

May 31, 2016

Mark R. Clawson & Mary A. Simsarian
14-3979 Pāhoa-Kapoho Road
Pāhoa, HI 96778

Dear Mr. Clawson & Ms. Simsarian:

**SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT
(FDA-16-000397)**
Applicants: MARK R. CLAWSON & MARY A. SIMSARIAN
Land Owners: MARK R. CLAWSON & MARY A. SIMSARIAN
State Land Use: Agricultural
County Zoning: A-10a (Agricultural, Minimum Building Site of Ten Acres)
Land Area: 9.709 acres
Location: Lot 83-H, Being a Portion of L.C. Aw. 8559, Apana 5, Ka poho, Puna, Island of Hawai'i, Hawai'i
Tax Map Key: (3) 1-4-016:009

Pursuant to authority conferred to the Planning Director by Chapter 25 (Zoning), Article 5, Division 7, Section 25-5-77 of the Hawai'i County Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for **one (1) additional farm dwelling** on the subject property and have **approved** your request subject to the following.

BACKGROUND INFORMATION

1. **Subject Property:** Lot 83-H, Ka poho, Puna, Island of Hawai'i.
2. **Lot Size:** 9.709 Acres.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-10a (Agricultural, minimum building site of Ten Acres).

5. **Proposed Request:** One Additional Farm Dwelling.
6. Farm Plan includes the following existing/maturing income-producing agricultural activities:
 - a. **Existing agricultural activities include:**
 - i. 2 acres of macadamia nut trees; and
 - ii. 1 acre of fruit trees.
7. In addition, you have provided evidence of an active General Excise Tax License.
8. **Evidence of Agricultural Activity:** This is an ongoing agricultural endeavor with much of the orchard just now coming to fruit-bearing age.
9. **Rationale for Establishing AFD:** To accommodate farm help.

FINDINGS

1. Chapter 205, Hawai'i Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in HRS Chapter 205-4.5 **means a single family dwelling located on and used in connection with a farm**, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, **or where agricultural activity provides income to the family occupying the dwelling.** (Emphasis added)
2. The subject lot was created prior to June 4, 1976, which, pursuant to HRS 205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income-producing agricultural activity.
4. In addition, the following agencies have submitted their comments as identified below:
 - a. Department of Water Supply (DWS) memo dated April 21, 2016. (*See attached Exhibit A.*)
 - b. Department of Health (DOH) memo dated April 27, 2016. (*See attached Exhibit B.*)

DECISION AND CONDITIONS

In view of the above, your request to construct **one (1) Additional Farm Dwelling** on the property is **approved** subject to the following conditions:

1. Your AFDA has been approved based on existing agricultural activity as summarized in this letter.
2. The AFD shall be used for farm-related purposes and provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the additional farm dwelling.
3. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the Bureau of Conveyances, State of Hawai'i, which states that the additional dwelling shall be used for farm-related purposes.
4. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed AFD Agreement must be returned to the Planning Department with the appropriate notarized signature(s) along with a check made out to the Bureau of Conveyances in the amount of \$31.00 in accordance with the enclosed AFDA Instructions.

The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been sent for recordation by the Planning Department.

5. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Hawai'i County Code, Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.
6. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
7. The First Party (as identified in the Additional Farm Dwelling Agreement) shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
8. DWS has noted that the subject parcel does not have a County approved water service at present, and an additional water service is not available for the additional dwelling.
9. This AFD shall be valid for a period of two (2) years from the date of this approval letter to

Mark R. Clawson & Mary A. Simsarian
Page 4
May 31, 2016

secure a Building Permit (BP) for the AFD. Failure to secure a BP for this AFD on or before **May 31, 2018** may cause the Director to initiate proceedings to invalidate the AFD.

Please feel free to contact Jonathan Holmes of this office at (808) 961-8146 or email jonathan.holmes@hawaiicounty.gov should you have any further questions and/or concerns.

Sincerely,



DUANE KANUHA
Planning Director

JRH:nci

\\COH33\planning\public\Admin Permits Division\AFDA\2016\FDA-16-000397 14016009 ClawsonSimsarian\APVL.docx

Enclosures: AFDA document
AFDA document instruction sheet
Exhibits A & B

xc: Chief Sanitarian, DOH
Manager-Chief Engineer, DWS

xc via email: GIS Section w/enclosures

Glenn Sako, Department of Research and Development (R&D)
glenn.sako@hawaiicounty.gov

Kamran Fujimoto, Natural Resources Conservation Services (NRCS)
kamran.fujimoto@hi.nacdnet.net

Jennifer Lopez, Puna Soil and Water Conservation District (SWCD)
jennifer.lopez@hi.nacdnet.net

Stan Sitko, Real Property Tax Division (RPT)
Stan.sitko@hawaiicounty.gov

Keita Jo, Real Property Tax Division (RPT)
kieta.jo@hawaiicounty.gov

DAVID Y. ICE
GOVERNOR OF HAWAII



APR 28 PM 2 27

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

PLANNING DEPARTMENT
COUNTY OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH

P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 27, 2016

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: APPLICATION: ADDITIONAL FARM SWELLING AGREEMENT
(FDA-16-000397)

Applicants: MARK R. CLAWSON & MARY A. SIMSARIAN

Land Owners: MARK R. CLAWSON & MARY A. SIMSARIAN

State Land Use: Agricultural

County Zoning: A-10a (Agricultural, Minimum Building Site of Ten Acres)

Land Area: 9.709 acres

Location: Lot 83-H, Beign a Portion of L.C. Aw. 8559, Apana 5,
Kapoho, Puna, Island of Hawaii, Hawaii

TMK: 1-4-016-009

The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." Federal and state regulations define a "public water system" as a system that serves 25 or more individuals at least 60 days per year or has at least 15 service connections. All public water systems are regulated by the Department of Health. All public water system owners and operators are required to comply with Hawaii Administrative Rules, Title 11, Chapter 20, titled "Rules Relating to Public Water Systems." For further information concerning public water system approval and requirements, please contact the Safe Drinking Water Branch at (808) 586-4258.

Recommend the subdivision lots be connected to an existing public water system. Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking water purposes since the quality may not meet National Primary Drinking Water Standards for potable drinking water for human consumption. The U.S. Environmental Protection Agency (EPA) defines human consumption to include drinking, bathing, showering, cooking, dishwashing, maintaining oral hygiene and includes hand washing.

105087

EXHIBIT
B



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KEOHAKO'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8687

April 21, 2016

2016 APR 22 PM 3 28
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: Mr. Duane Kanuha, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Additional Farm Dwelling Agreement
(FDA-16-000397)
Applicant - Mark R. Clawson and Mary A. Simsarian
Tax Map Key 1-4-016-009

We have reviewed the subject application and have the following comments.

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department's existing water system.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Keith K. Okamoto
Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy - Mr. Mark R. Clawson and Ms. Mary A. Simsarian

EXHIBIT
A

105012

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...
The Department of Water Supply is an Equal Opportunity provider and employer.

DOH-EP-041H
DIRECTOR
DEPUTY
DATE: 4/27/2016
TIME: 1:13 PM
BY: [Signature]
Page 2 of 2

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

When two or more dwellings are connected to a cesspool, the cesspool is considered a large capacity cesspool. EPA requires closure or upgrade of the large capacity cesspool by April 5, 2005 or the owner could face enforcement action by EPA, including a fine of \$32,000 per day per cesspool. In addition, State Wastewater Rules no longer allows an existing cesspool to service two dwellings regardless of the number of bedrooms.

The wastewater system is inadequate for the proposed project. Have your engineer submit to DOH Plans to upgrade current cesspool to a septic system.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/ene-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.